

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHEN MACK,

Petitioner,

2:02-cv-1539-GEB-JFM-P

vs.

G. M. GALAZA, Warden, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's November 3, 2006 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

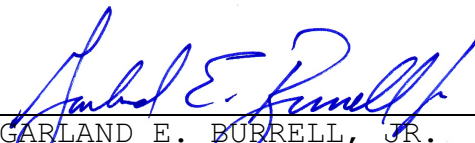
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition: (1) whether there was insufficient evidence
4 to support his conviction; (2) whether he received ineffective assistance of trial and appellate
5 counsel; (3) whether his right to confront the witnesses against him was violated by the
6 admission of hearsay evidence; (4) whether the admission of evidence of uncharged conduct
7 violated his right to a fair trial; and (5) whether his sentence constitutes cruel and unusual
8 punishment.

9 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
10 issued in the present action.

11 Dated: December 22, 2006

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14 GARLAND E. BURRELL, JR.
15 United States District Judge
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.